

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must

assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has been unable to obtain a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. However, in his financial affidavit, plaintiff states that his average monthly balance is \$17.00. And in his filing dated March 13, 2008, plaintiff says that he receives \$7.50 per month from the state. Accordingly, the Court will assess an initial partial filing fee of \$3.40, which is 20 percent of plaintiff's average monthly balance.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is

immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint¹

Plaintiff brings this action under 42 U.S.C. § 1983. Named as defendants are Joe Hoffmeister (Superintendent, ERDCC), T. Owens (Nurse, Correctional Medical Services), Charles Chastain (Physician, CMS), and Unknown Matthews (same). The complaint seeks monetary relief.

Plaintiff alleges that he has HIV/AIDS and that he has missed several doses of his HIV medications since he has been incarcerated at ERDCC. Plaintiff claims that

¹In addition to the complaint, the Court considers the allegations in plaintiff’s supplemental filings dated March 3 and April 10, 2008.

he disagrees with Matthews and Chastain about which drug cocktail he should be taking. Plaintiff says that he is suffering from stress as a result of missing his medications.

Discussion

The complaint is silent as to whether defendants are being sued in their official or individual capacities. Where a “complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims.” Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). The complaint fails to state a claim against defendant Hoffmeister because “neither a State nor its officials acting in their official capacity are ‘persons’ under § 1983.” Id. And the complaint fails to state a claim against defendants Owens, Chastain, or Matthews because plaintiff has not alleged that a policy, custom, or official action of CMS caused an actionable injury. Sanders v. Sears Roebuck & Co., 984 F.2d 972, 95-76 (8th Cir. 1993). As a result, the complaint will be dismissed under 28 U.S.C. § 1915(e).

“Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990); see also Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege that defendant was personally involved in or directly responsible for the incidents that injured plaintiff); Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995) (respondeat superior theory inapplicable in § 1983 suits). In the instant action, plaintiff has not set forth any facts indicating that any of the named defendants were directly involved in or personally responsible for the alleged missed doses of medication. As a result, the complaint should be dismissed on the alternative ground that plaintiff has failed to establish a causal link between defendants and the alleged deprivation of rights.

“[C]laims of inadequate medical treatment which reflect a mere disagreement with [state] authorities over proper medical treatment do not state a claim of constitutional magnitude.” Massey v. Hutto, 545 F.2d 45, 46 (8th Cir. 1976). As a result, plaintiff’s disagreement with defendants Matthews and Chastain about the “correct” drug cocktail is not actionable under § 1983.

For each of these reasons, the complaint will be dismissed, without prejudice, under 28 U.S.C. § 1915(e).

Accordingly,


IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$3.40 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint fails to state a claim upon which relief can be granted.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 17th day of April, 2008.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE